INTRODUCTION TO INTERNATIONAL LAW AND STATUS OF FORCES AGREEMENTS

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OVERVIEW

- Definition of International Law
- Categories of I-Law
- Key Players
- Sources of I-Law
- Status and Application of I-Law
- International Dispute Resolution
- International Agreements and SOFAs

INTERNATIONAL LAW

INTERNATIONAL LAW IS THE LAW WHICH THE WICKED DO NOT OBEY AND THE RIGHTEOUS DO NOT ENFORCE.

ABBA EBAN
ISRAELI AMBASSADOR TO U.S.
20 SEPTEMBER 1957

DEFINITION

- Traditional:
  - *The law that governs relations between states*
  - Individuals/Private Entities Nonplayers
- Modern:
  - Still Primarily Interstate, But Increasing Recognition of Non-State Interests
    - Organizations: United Nations can enter into treaties
    - Individuals recognized by human rights/war crimes

MAJOR I-LAW CATEGORIES

- *Law Relating to Individuals*
- Law of Int'l Economic Development
- State Responsibility
- *Law of Treaties*
- *Law of the Sea*
- *Air Law*
- *Outer Space Law*
- Environmental Law
- Law Regulating Int'l Organizations
- *Law Relating to Int'l Peace and Security*
- *Law of Armed Conflict*
- *Int'l Criminal Law*

INTERNATIONAL ACTORS

- States
- International Organizations:
  - Public, Intergovernmental, Created by Treaty
    - United Nations
    - NATO
  - Private, Nongovernmental
    - Amnesty International
    - ICRC
- Individuals

STATES

- First Defined by Treaty of Westphalia
  - Ended 30 Years War (1618-1648)
  - Established Treaty-Based system for European Relations (Treaties Between *States*)

- "State" Defined as Possessing:
  - Territory
  - Population
  - Government
  - "Capacity" to engage in diplomatic/
    relation (Soviet satellites; provinces, etc)

INTERNATIONAL ORGANIZATIONS

- Relatively recent animals
  - Earliest ones from mid 1800's
    - International Telegraphic Union (1865)
    - Universal Postal Union (1874)
  - Post WW I
    - International Labor Organization
    - League of Nations
  - Post WW II
    - United Nations
    - Most others in existence today

UNITED NATIONS

- Came into Being 194
  - UN "Charter"
    - Multilateral Treaty
    - Constitution of UN
    - Supremacy Provision
    - Use of Force Provision
- 51 Original Members
- Today Includes Virtually All Nations

SOURCES OF I-LAW

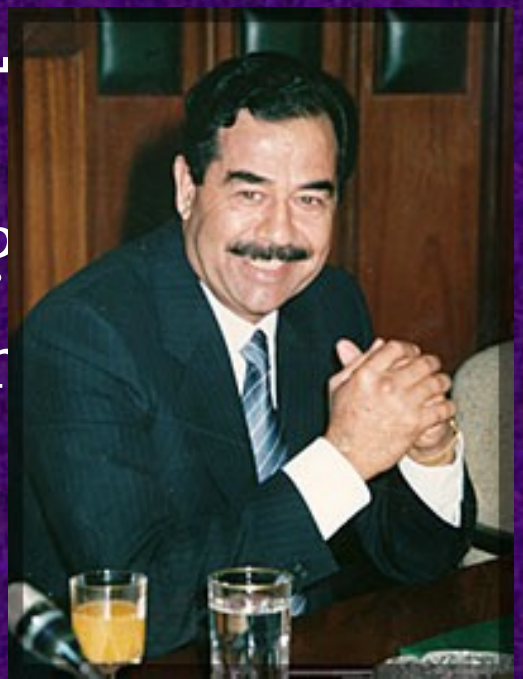
- Sources of US Domestic Law:
  - Constitution
  - Legislative Enactment
  - Judicial Decisions *(Stare Decisis)*
- No Parallel in I-Law
  - No Legislature
  - No Common Law System of *Stare Decisis*

SOURCES OF I-LAW

- Three Formal Sources
  - International Conventions (multilateral or bilateral)
  - International Custom as Evidence of a General Practice Accepted by States as Law
  - Principles of Law of “Civilized” Nations
- Informal Sources
  - Judicial Decisions and Teaching of Highly Qualified Publicists

STATUS: IS IT LAW?

- Skeptics Arena: Must Acknowledge Degree of "Messiness"
- Major argument against recognition of I-Law as L
  Enforcement
  - "Who's gonna make me…?
  - No international police for



IT IS LAW

- "Enforcement"
  - Based on State Self Interest
  - UN as Policeman: Chapter 7 of UN Charter
  - *Pacta Sunt Servanda*: International Agreements Respected as a Matter of Law
  - "Voluntary" Compliance
- Bottom Line:
  - Deference to I-Law Suggests Its Existence
  - Functioning of I-Law in Diplomacy, Commerce

APPLICATION OF I-LAW

- Internationally
  - Only recognized law
  - Superior to Domestic/Municipal Law
    - Treaty Performance Not Excused for Violating U.S. Constitution
- Domestically
  - An Area of Law Just Like Others
  - Recognized in Our Courts as “Highest Law of the Land” (Article VI, Clause 2)

INTERNATIONAL DISPUTE RESOLUTION

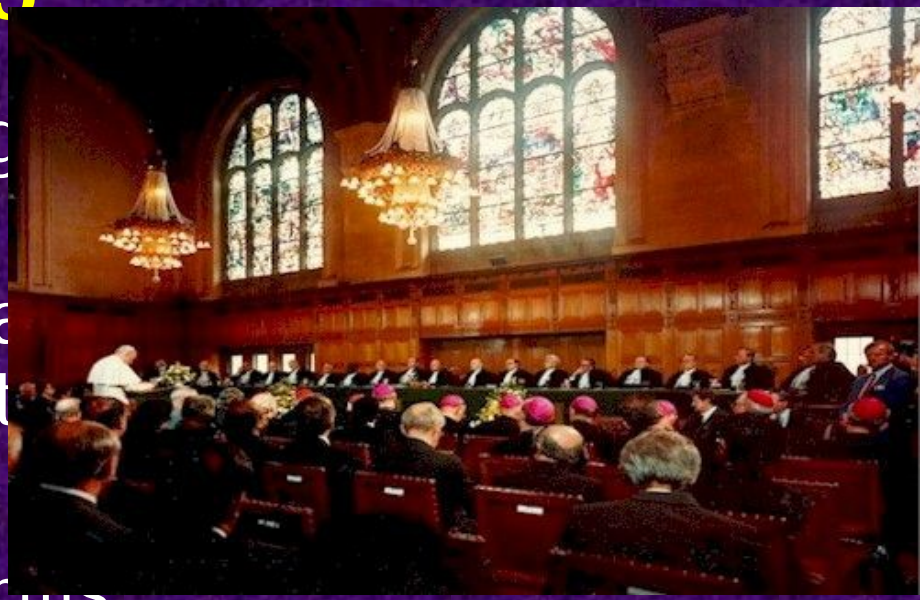
- Non-judicial
- Quasi-judicial
- **Judicial**
- Armed Conflic

INTERNATIONAL DISPUTE RESOLUTION

- Judicial (International Courts): Permanent Courts are Relatively New
  - Central Am. Court of Justice (1908-1918)
  - International Court of Justice (ICJ, 1945)
  - International Criminal Court (1998)
  - Various Specialized Regional Tribunals (European/American Courts of Human Rights)
  - States must CONSENT to jurisdiction

INTERNATIONAL DISPUTE RESOLUTION: ICJ

- Successor to PCIJ
- Stopped Functioning During WWII
- ICJ "Statute" Integra Part of UN Chart
- Makeup of ICJ
  - 15 Judges; 9 Year Terms
  - No Reservation of Seats for Certain States
- Effect and Enforcement of Judgements



INTERNATIONAL AGREEMENTS

- Under International Law
  - Written or Oral
  - Any Intent to Bind Sufficient
  - Reservations Usually Authorized
  - Stages: Negotiation, Signature, Ratification, Entry into force
- “Treaty” Under US Law: Treaty vs. Executive Agreement

http://aflsa.jag.af.mil/
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INT'L AGREEMENTS IN THE UNITED STATES AIR FORCE

- AFI 51-701, *Negotiating, Concluding, Reporting, and Maintaining International Agreements*
- Commanders Must Have Specific Authorization to Negotiate Int'l Agreements
  - Any agreement concluded with foreign government or with international organizations

INT'L AGREEMENTS IN THE UNITED STATES AIR FORCE

- Negotiation Can Be Construed to Convey Binding Offer
  - Commander may be seen as Having Authority even if Doesn't ("Maverick Negotiation")
  - Words/Deeds Could Be Taken As Binding Offer by Other Governments or Agents
- Bottom Line: Do Nothing That Might be Misconstrued as Negotiation Unless You Have Advanced Authority

STATUS OF FORCES AGREEMENTS (SOFAs)

HISTORY

- Public International Law
- Clash of Sovereign Prerogatives
- “Law of the Flag”

- World Wars I & II: [illegible]ents
- Post WWII: Peace Time Occupation
  - SOFAs Created: An Exercise of Sovereignty

SOFAs

- International Agreements Regulating Presence Of Forces In Another Country
- As Of 16 Feb 2001 - 107 SOFAS
- Cautions:
  - Existence May Be Classified
  - Terms May Be Classified
  - Supplements May Be Classified
    - 10,000 Supplements To NATO SOFA

Status of Forces Agreement

An agreement which defines the legal position of a visiting military force deployed in the territory of a friendly state. … These provisions describe how the authorities of a visiting force may control members of that force and the amenability of the force or its members to the local law or to the authority of local officials.

Joint Publication 1-02

TYPES OF SOFAs

- NATO SOFA
  - MULTILATERAL
  - APPLIES TO NATO MEMBERS
- NON-NATO SOFA
- MINI-SOFA
- A&T AGREEMENT

TYPICAL PROVISIONS

- Foreign Criminal Jurisdiction: 3 Categories
  - Full Criminal FCJ Immunity Under A&T Status
  - No FCJ Immunity at All Because No Agreement
  - Partial FCJ Immunity When SOFA Allocates Jurisdiction Between Receiving/Sending States
- Must Answer Three Questions
  - Who Has Jurisdiction Over Whom?
  - Which System Tries Accused?
  - Rights of Accused?

NATO SOFA ARRANGEMENT

- Exclusive Sending Country Jurisdiction
- Exclusive Host Country Jurisdiction
- Concurrent Jurisdiction
  - Host Country has Jurisdiction UNLESS Exception Exists
- More Information This Afternoon

TYPICAL PROVISIONS

- Operational Rights
  - Fly/Land - Aircraft/Weapons
- Personnel Actions
  - Passports/Visas
- Customs Duties & Taxes
  - U.S. Forces have to pay?
- Banking & Currency
  - Import of Currency?
- Medical Facilities & Treatment

PRIMARY SOFAs

- **NATO (1951)**
- **JAPAN (1960)**
- **KOREA (1966)**

CURRENT OPERATIONAL/ LEGAL PROBLEMS

- LANDING RIGHTS
- INSPECTING AND SPRAYING AIRCRAFT INTERIORS
- CUSTOMS & VISA

OTHER NATO SOFA PROVISIONS

- Mutual Assistance:
  - Police
  - Investigation
  - Arrest
  - Notification

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